Appl. No. 09/966,414
Pre-Appeal Brief Request for Review

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IN THE UNITED STATES
PATENT AND TRADEMARK OFFICE

Appl. No.	:	**09/966,414**
Applicant(s)	:	**GUTTA et al.**
Filed	:	**9/28/2001**
TC/A.U.	:	**2611**
Examiner	:	**LONSBERRY, Hunter B.**
Atty. Docket	:	**US-010451**

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On: _7 April 2006_

By: _____

Title: **INDIVIDUAL RECOMMENDER DATABASE USING PROFILES OF OTHERS**

Pre-Appeal Brief Request for Review

Mail Stop **AF**
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In response to the final Office action of 7 March 2006, the applicants request review of the final rejection in the above referenced application. No amendments are being filed with this request. This paper is being filed with a notice of appeal.

This review is requested for the reason(s) stated on the attached sheet(s).

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US-010451 Review Request 5.307

Atty. Docket No. US-010451

Appl. No. 09/966,414
Pre-Appeal Brief Request for Review

Page 2 of 6

REMARKS

The examiner's omissions of one or more essential elements needed for a prima facie rejection:

The Office action rejects claims 1-6, 8-9, and 11 under 35 U.S.C. 102(b) as being anticipated by Payton (USP 5,790,935).

MPEP 2131 states::

"A claim is anticipated only if *each and every element* as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). "The *identical invention* must be shown in as *complete detail* as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

Claim 1, upon which claims 2-4 depend, claims a method that includes modifying a first user profile responsively to data from a second user profile associated with a second user such that a frequency of recommendations of at least one data-class is increased without decreasing a frequency of recommendations of any other data-classes, so that the first user profile is expanded in scope according to preferences stored in the second user profile.

Payton fails to teach modifying a first user's profile based on a second user's profile. Payton also fails to teach modifying a frequency of recommendations of one data-class without decreasing the frequency of recommendations of another data-class.

The Office action asserts that Payton teaches modifying a first user's profile based on a second user's profile at column 9, lines 4-26. The applicants respectfully disagree with this assertion. At the cited text, Payton describes the flow diagram at FIG. 7b:

"In FIG. 7b, the collaborative filter 42 responds to both the reception of a subscriber profile update from any of the local servers (step 160) and the reception of a new on-demand request (step 162). The collaborative filter 42 then updates the subscriber profile 40 (step 164), recomputes the subscriber similarity groups (step 166), predicts subscriber ratings (168), and determines revisions to the subscribers' lists of recommended items (step 170). The filter 42 sends the ratings changes to the subscriber (step 172) and sends the additions to the scheduling processor (step 174)." (Payton, column 9, lines 4-13.)

US-010451 Review Request 5.307

Atty. Docket No. US-010451

As taught by Payton, and as clearly illustrated in FIG. 7b, the user's profile 40 is updated at step 164, based on the user's prior behavior. Thereafter, the updated user's profile 40 is used to determine similar subscribers, and the similarity groups are used to determine ratings of available material. The determined ratings are then sent to the user, at step 172. Because the user's profile 40 is updated at step 164, before the similar subscribers are determined at step 166, it cannot be said that the user's profile is updated based on the profile of these other subscribers.

The Office action asserts that the user's profile is updated when the ratings are provided to the user at step 172 (Office action, page 2, third paragraph). The applicants respectfully maintain that providing a set of ratings of available material does not constitute a change to the user's profile. The applicants respectfully suggest that the Examiner is confusing 'cause' and 'effect'. The user's profile is used to determine the similar groups, and the similar groups are used to determine the ratings. The ratings do not cause a change to the user's profile.

Because Payton does not teach modifying a user's profile based on another user's profile, as specifically claimed in claim 1, the applicants respectfully maintain that the rejection of claims 1-4 under 35 U.S.C. 102(b) over Payton is unfounded, per MPEP 2131.

Additionally, as noted above, Payton fails to teach modifying a frequency of recommendations of one data-class without decreasing the frequency of recommendations of another data-class.

The Office action asserts that Payton's teaching of using the combined scores to recommend programming is equivalent to modifying a frequency of recommendations of one data-class without decreasing the frequency of recommendations of another data-class, without a basis for this assertion. Payton teaches modifying the rating based on a weighted average of ratings provided by subscribers having profiles with a mean-squared difference from the user's profile that is below a given threshold, and does not address the relative frequency of recommendations among data-classes.

Because Payton does not teach modifying a frequency of recommendations of one data-class without decreasing the frequency of recommendations of another

data-class, as specifically claimed in claim 1, the applicants respectfully maintain that the rejection of claims 1-4 under 35 U.S.C. 102(b) over Payton is unfounded, per MPEP 2131.

Claim 5, upon which claims 6 and 8 depend, claims a method that includes selecting test-data for revising a first user profile based on data from a second user profile, requesting feedback on the test-data from the first user, and modifying the first user profile based on the feedback, wherein selecting the test-data includes selecting primarily test-data for which the first user profile is insufficient for the recommender to determine whether the test-data would be favored or disfavored.

Payton fails to teach selecting test-data, fails to teach requesting feedback on such test-data, fails to teach modifying the user profile based on the feedback, and fails to teach primarily selecting test-data for which the user's profile is insufficient for determining whether the test-data would be favored or unfavored.

Payton teaches a conventional 'passive' recommendation system, wherein the user's profile is updated based on the user's prior behavior. The applicants respectfully maintain that providing recommendations to a user does not constitute providing test-data and requesting feedback on that test-data. Payton does not request feedback on the recommendations. Payton updates the user's profile based on the user's behavior, regardless of whether the user happens to select a recommended program.

Assuming in argument that providing recommendations and monitoring behavior can be interpreted to correspond to selecting test-data and requesting feedback on the test-date, the applicants respectfully maintain that Payton does not teach primarily selecting test-data for which the user's profile is insufficient for determining whether the test-data would be favored or unfavored.

The Office action asserts that Payton's teaching of using similar-user profiles to fill in blanks in the user's profile (non-rated items) corresponds to primarily selecting test-data for which the user's profile is insufficient. Payton does not give the non-rated items of the user's profile any more weight than any other item, and, contrarily, in one embodiment, specifically teaches ignoring these non-rated items:

US-010451 Review Request 5.307

                                                        Atty. Docket No. **US-010451**

"Only items rated by both subscribers are used to compute the measure. Predictions are then made..." (Payton, column 9, lines 19-20). Conversely, claim 5 specifically claims selecting *primarily* such non-rated items to form the test-data for which the user's feedback is requested.

Because Payton does not teach selecting test-data for revising a first user profile based on data from a second user profile, requesting feedback on the test-data from the first user, and modifying the first user profile based on the feedback, and specifically does not teach selecting the test-data by primarily selecting test-data for which the first user profile is insufficient for the recommender to determine whether the test-data would be favored or disfavored, as claimed in claim 5, the applicants respectfully maintain that the rejection of claims 5, 6, and 8 under 35 U.S.C. 102(b) over Payton is unfounded, per MPEP 2131.

Claim 9, upon which claim 11 depends, claims a data-class recommender that includes a learning engine that is programmed to progressively generate a description of data selections that are favored and disfavored by the first user to form a user's profile that includes a narrow description defining target data selections and a broad description defining non-target data selections, wherein recommendations are derived from a space of selections lying between the broad and narrow descriptions.

Payton does not teach broad and narrow descriptions of a user's preferences, and therefore cannot be said to teach a user profile that includes a narrow description defining target data selections and a broad description defining non-target data selections, and cannot be said to provide recommendations that are derived from a space of selections lying between the broad and narrow descriptions.

The Office action asserts that programs with a higher rating in Payton form a narrow description, and programs with a lower rating form a broad description, without providing a basis for such an assertion. The applicants respectfully maintain that a program's rating has no relationship to the breadth (narrow - broad) of a description.

US-010451 Review Request 5.307

Atty. Docket No. **US-010451**

Because Payton fails to teach a user's profile that includes a narrow description defining target data selections and a broad description defining non-target data selections, and fails to teach recommendations being derived from a space of selections lying between the broad and narrow descriptions, as specifically claimed in claim 9, the applicants respectfully maintain that the rejection of claims 9 and 11 under 35 U.S.C. 102(b) over Payton is unfounded, per MPEP 2131.

Because Payton fails to teach each element of each independent claim, the applicants respectfully maintain that the Examiner has failed to provide the essential elements required for a prima facie rejection, and respectfully request that all claims be allowed to issue.

Respectfully submitted,

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US-010451 Review Request 5.307

Atty. Docket No. US-010451